Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

GERALD LEBEAUX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the United States of America had Subject Matter Jurisdiction over a Federal Drug Trafficking Crime involving an American Sioux-Dakota Indian under the 1868 Treaty of Fort Laramie which had been abrogated by an 1877 Act of Congress to which Petitioner's Tribe was not a signatory.

PARTIES TO THE PROCEEDINGS

Petitioner, Gerald Lebeaux, was a criminal defendant in the United States District Court for the District of South Dakota, Western Division and the civil appellant in the United States Court of Appeals for the Eighth Circuit. Respondent, United States of America was the plaintiff in the District Court and appellee in the United States Court of Appeals for the Eighth Circuit.

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Petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit filed in this case on January 31, 2006 affirming Petitioner's conviction and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is unpublished, but can be found at *LeBeaux v. United States*, USCA No. 05-2037 (8th Cir. January 31, 2006).

STATEMENT OF JURISDICTION

Petitioner appealed from a final Judgment of conviction to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals rendered its unpublished per curiam opinion on January 31, 2006 affirming the order and judgment of the district court entered February 8, 2005, Hon. Karen E. Schreier presiding. An extension of time was granted to file this petition by June 1, 2006. This Court has jurisdiction pursuant to Title 28, United States Code, § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article VI, Section 2, provides that treaties entered into by the President and the Senate as mandated by Article II, Section 2, Clause 2, are considered to be "the supreme law of the land," As such, "judges in every state shall be bound thereby." 1868 Treaty of Fort Laramie, Article I, Paragraph 3.

STATEMENT OF THE CASE

A. The Proceedings Below

Petitioner, Gerald LeBeaux, and his son, Neil LeBeaux, were initially charged by a Criminal Complaint filed in the United States District Court for the District of South Dakota, Western Division, on May 1, 2001.

On May 17, 2001, an Indictment was filed charging both the LeBeauxs in Count 1 with Conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1) and in Count 2 with possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1).

Trial commenced on October 9, 2001 and the jury returned a verdict on October 11, 2001 of not guilty acquitting both the LeBeauxs on Count 1 and convicting both on Count 2. Gerald LeBeaux was sentenced to 120 months custody, $700 fine, and three years supervised release on January 7, 2002.

LeBeaux appealed his sentence to the United States Court of Appeals for the Eighth Circuit which was affirmed on August 27, 2002.

On August 28, 2003, LeBeaux filed a pro se Motion to Vacate, Set-aside, or Correct Sentence under 28 U.S.C. § 2255 ("§ 2255 Motion"). On February 8 , 2005 the district court denied LeBeaux's § 2255 Motion.

LeBeaux timely filed a Motion for Certificate of Appealability, together with a Notice of Appeal on April 5, 2005. The district court granted LeBeaux's Motion on April 6, 2005.

LeBeaux appealed the district court's denial of his § 2255 Motion to the United States Court of Appeals for the Eighth Circuit which affirmed the district court's denial on January 31, 2006.

B. The Factual Background

The facts underlying Lebeaux's § 2255 Motion were summarized by the United States Court of Appeals for the Eighth Circuit's opinion affirming LeBeaux's direct appeal in *United States v. LeBeau*, 2002 U.S. App. LEXIS 17769 (8th Cir. No. 02-2002) (unpublished) as follows:

> The LeBeaus[1] fled from tribal officers in a lengthy, high-speed car chase. One of the officers testified that he saw the LeBeaus stop their loaned rental car on a rarely traveled road over twenty miles from the nearest town and run from their car "with something" to a hay bale. After apprehending the LeBeaus later the same day, officers returned to the bale and found twenty-one baggies (seventeen small, one medium, and three large) containing a total of 95 grams of cocaine stuffed inside. In the LeBeaus's car, the officers found an open box of baggies (with twenty-one missing) that were the same as the small baggies containing the cocaine.

The following facts were elicited at LeBeaux's trial and evidently believed by the jury. On April 23, 2001, at approximately 4:30 pm, Melanie Zimiga ("Zimiga") was

1. The United States Court of Appeals for the Eighth Circuit misspelled the proper name of Petitioner herein. The proper spelling is LeBeaux.

returning from the KILT Radio Station to her home in Kyle. She noticed a Dodge Intrepid driving in an odd manner on the highway in front of her. Zimiga twice observed the driver of the car, whom she identified at the trial as Gerald LeBeaux, exit his car and scream and holler while dancing in the middle of the road. Zimiga reported the license plate number on the car to Kyle police. Local police dispatcher, upon querry, indicated that Lebeaux's car had been stolen, but subsequently discovered that it was not stolen and the database was in error.

Immediately subsequent to Zimiga's call, police were dispatched and spotted the subject car parked on the highway, but continued driving before turning back to approach the vehicle. The subject vehicle got back on the highway and the police pursued LeBeaux with flashing lights and siren. The police initiated a felony traffic stop based on misinformation from the dispatcher that the car was stolen. LeBeaux and his son who were occupants of the car stopped and refused to get out of the car and drove away. The police followed at a fast pace. A road block was set up to no avail and the subject vehicle reached the Pine Ridge Indian Reservation line, but veered away and continued until it reached the Pine Ridge Indian Reservation line a second time. The subject car entered the reservation, fled into a field and became stuck in the mud. The occupants were promptly arrested and handcuffed while on the Pine Ridge Indian Reservation and were identified as Gerald Lebeaux and his son. During the chase the officers did not report that the subject car had stopped at a haystack on private ranch property, but it was later revealed that one of the officers witnessed some activity at the haystack. Officers returned to the haystack and in searching, located a bag between the hay bales, containing 21 smaller bags all containing a yellow

powdery substance later determined to be cocaine. The pursuit began on the Pine Ridge Indian Reservation, then left the Reservation, and ultimately re-entered the Reservation where it ended. All the road blocks had been set up by Tribal Police Officers from the Pine Ridge Indian Reservation.

REASON FOR GRANTING THE PETITION

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULING ON SUBJECT MATTER JURISDICTION WHEREIN CONGRESS HAD NO ENUMERATED POWER TO ALTER TRIBAL SOVEREIGNTY.

LeBeaux contends that both the trial and appellate courts below erred and in holding that the United States had jurisdiction to prosecute him contending that the United States failed to comply with the 1868 Treaty of Fort Laramie, 15 Stat. 635, which provides in pertinent part:

> If bad men among the Indians shall commit a wrong or depredation upon the person or property of anyone, white, black or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent, and notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws . . .[2]

2. Article I, Paragraph 3, The Fort Laramie Treaty of April 29, 1868.

LeBeaux further argues that no Notice was given to the Indian Tribe of which he was a member, nor was the Indian Tribe availed of the opportunity to surrender LeBeaux to the authority of the United States. This process was not followed in LeBeaux's case and the United States caused LeBeaux to be directly indicted and prosecuted according to its Indictment with absolutely no Notice given to LeBeaux's Tribe. Further, the Indian Tribe was not availed of the opportunity to surrender LeBeaux to the United States and therefore United States did not acquire jurisdiction over LeBeaux as specified by the applicable Treaty provision. The Treaty imposes an obligation on the Tribe to "deliver up the wrongdoer to the United States" upon proof and Notice to the Tribe". It is axiomatic that the Tribe was never given Notice by the United States of LeBeaux's wrongdoing. What is important is that LeBeaux, as a Tribal member, needed to be in the custody of the Tribe first in order for the Tribe to experience the Treaty obligation to "deliver [LeBeaux] up . . . to the United States". It is beyond mere semantics that the United States wired-around this requirement allowing the Tribe to exercise their obligation by simply skipping a step and improperly securing personal jurisdiction over LeBeaux. It was the juxtaposition of LeBeaux's sequence of events that created the defalcation herein; i.e., how could the Tribe obligatorily turn LeBeaux over when they were deprived of having him, duly noting that LeBeaux was formally arrested on the Pine Ridge Indian Reservation.

LeBeaux asserts that the central core of his argument is: 1) that the lower courts' reliance on *United States v. Drapeau*, 414 F.3d 869 (8th Cir. 2005) is misplaced because *Drapeau* was a Lower Brule Sioux Indian who was not of the same Tribal affiliation as LeBeaux, who is a Lakota Sioux Indian. In *Drapeau*, Defendant Drapeau was classified as a citizen

of the United States and was made subject to the general Federal laws therein. LeBeaux is **not** a citizen of the United States, was of a different Tribe that was on restricted Trust Land which had never allocated authority to the United States government to exercise jurisdiction over them. Therein lies the distinction; and 2) LeBeaux's apprehension on restricted Trust Land was akin to him being on sacred territory. Further, under the Fort Laramie Treaty of 1868, the United States pledged that the Great Sioux Reservation would be "set apart for the absolute and undisturbed use and occupation" of the Sioux Nation and that no Treaty for the cessation of any part of the Reservation would be valid as against the Sioux unless executed and signed by at least three-fourths of the adult male Sioux population.[3] Subsequently, in 1876 an agreement was presented to the Sioux by a special Commission of Congress, but ratified by only ten-percent (10%) of the adult male Sioux male population. *See United States v. Sioux Nation of Indians, et al.*, 448 U.S. 371 (1980). In 1877, Congress passed an Act (the 1877 Act) implementing this "agreement" and thus, in effect, abrogated the Fort Laramie Treaty. Throughout the ensuing years, the Sioux regarded the 1877 Act as a breach of that Treaty. In fact, for over a century now, the Sioux Nation has claimed that the United States unlawfully abrogated the Fort Laramie Treaty. The subsequent attempt by Congress to resolve the impasse of the improper ten-percent adult male Sioux population ratification enacting the passage of the 1877 Act, has been regarded by the Sioux as a breach of this Nation's solemn obligation to reserve in perpetuity certain lands for their occupation. A series of civil lawsuits by the Sioux ultimately culminated in their being awarded monies and interest for the improper exercise of the government's power of eminent

3. Article XII of the Fort Laramie Treaty of 1868.

domain resulted in the court concluding that "A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history, which is not, taken as a whole, the disgrace that pleases some persons to believe". *United States v. Sioux Nation*, 518 F.2d 1298 (8th Cir. 1975).

Because LeBeaux's Tribe had never properly or legally ratified the 1877 Act by its own terms, and because LeBeaux was himself not a citizen of the United States; the attempt of the 1877 Act to modify the existing Treaty was a nullity. It is respectfully requested that the Court take judicial notice of the fact that LeBeaux's Tribe has never relinquished jurisdiction to the United Sates as did other tribal signatories who sought to modify the Treaty by the requisite three-fourths adult male vote.

Lastly, the Major Indian Crimes Act (18 U.S.C. § 1153) and its Amendments nor the Controlled Substances Act and its Amendments name drug crimes as a crime over which Federal government has jurisdiction in Indian Country. The 1868 Fort Laramie Treaty gave jurisdiction over Indian wrongdoers in Indian Country exclusively to the Indian Tribe. Because of that jurisdiction, this Court overturned the conviction in *Ex Parte Crow Dog*, 109 U.S. 556 (1883). This Court has said that to justify a departure from the rule of Tribal jurisdiction, Congress would have to clearly express an intention. None of the statutes involved prior to 1883 had done so. Therefore, to remedy this fact Congress attached a bill to the general Appropriation Act of 1885 enacting the Major Crimes Act which identified seven major crimes, none of which involved controlled substances. The Act was Amended in 1988 to include fourteen crimes and did not add crimes involving controlled substances to that list of enumerated crimes.

Historically, there were nine original Treaties signed in 1868. The 1868 Treaty at Fort Laramie is considered to be Enjoined Law and should **not** be confused with the concept of Imposed Law as in the Navajo's and other Treaty tribes' agreements. Instructive in the contemporary interpretation of the necessity to adhere to the specific provisos of the plain language contained in the 1868 Treaty of Fort Laramie is the case of *Tsosie v. United States*, 825 F.2d 393 (Fed. Cir. 1987) wherein the case was remanded to the district court with instructions to follow the literal text of the 1868 Treaty thereby extinguishing the government's threshold defenses that the Treaty did not apply. The government in its Response Brief wholly failed to address the significance of *Tsosie* earlier cited in Appellant's Opening Brief. Of further significance is the recent decision by the U.S. Supreme Court on *certiorari* from this Court [Eighth Circuit] in *United States v. Lara*, 541 U.S. 11 (2004) wherein the Court saved existing Treaties from being invalidated or impaired with particular emphasis by Justice Thomas' Concurring Opinion that he could find no consensual text that gave Congress any authority to rule on the meets and bounds of the Treaty. In *Lara, supra*, the majority opinion written by Justice Breyer discloses that the Court utterly fails to find any provision of the Constitution that gave Congress the enumerated power to alter tribal sovereignty inclusive of the Indian Commerce Clause. Recognizing that Federal Indian Law appears to be at odds with itself; the Court noted that the Federal Government cannot [inconsistently] simultaneously claim power to regulate virtually every aspect of the tribes through ordinary domestic legislation [*vis-a-vis* Congress] and also maintain that the tribes possess anything resembling sovereignty in any meaningful sense. The 1868 Treaty of Fort Laramie simply did **not** concede jurisdiction to the United States government, nor plead as a dependent community with

specific Indian allotments, nor has it been modified by three-quarter male vote of Lebeaux's tribe, nor has Congress the unilateral authority to amend. In the past, courts have recognized that the past exploitation of Indians could not be sanctioned by the force of law and hence have developed a set of judicial rules by which to deal with these problems. Among the more important rules of construction are that Indian Treaties are to be interpreted as Indians have understood them and Indian Treaties are to be liberally construed in favor of the Indians.

CONCLUSION

Essentially, Congress has hoped to solve many intractable problems associated with this Nation's relationship with quasi-sovereign Indian Nations by having the judicial system interpret various Indian Treaties. There has been an unlamented demise evidencing how badly the lower courts function in adjudicating Indian Treaty disputes that are beyond the limitations of the judicial process.

Accordingly, LeBeaux respectfully requests that the petition for writ of certiorari be granted.

Respectfully submitted,

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